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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FOURTH AGE LIMITED, et al.,

Plaintiffs,

v.

WARNER BROS. DIGITAL
DISTRIBUTION, INC., et al.,

Defendants.

Case No. CV 12-09912 AB (SHx)

Hon. André Birotte, Jr.
Hon. Magistrate Stephen J. Hillman

DISCOVERY MATTER

**[REDACTED] DECLARATION
OF JULIA R. HAYE IN SUPPORT
OF JOINT STIPULATION RE:
THE TOLKIEN/HC PARTIES'
MOTION TO COMPEL IN
CAMERA REVIEW OF
DOCUMENTS ON
DEFENDANTS' PRIVILEGE
LOGS**

[Fed. R. Civ. P. 37(a) and Central
Dist. Local Rule 37-2]

[Joint Stipulation, Notice of Motion
Declaration of Molly M. Lens, and
Proposed Order filed and/or lodged
concurrently herewith]

Hearing Date: October 27, 2014
Time: 2:00 p.m.
Place: Ctrm. 550, Roybal Building

Action Filed: November 19, 2012
Discovery Cutoff: July 29, 2014
Trial Date, Pretrial Conf. and Motion
Cutoff Date: Vacated

WARNER BROS. DIGITAL
DISTRIBUTION, INC., et al.,

Counterclaim Plaintiffs,

v.

FOURTH AGE LIMITED, et al.,

Counterclaim Defendants.

DECLARATION OF JULIA R. HAYE

I, Julia R. Haye, declare as follows:

1. I am an attorney at law duly licensed to practice in the State of California and admitted to the Bar of the United States District Court for the Central District of California. I am a partner of the firm of Greenberg Glusker Fields Claman & Machtinger LLP, counsel for plaintiffs and counterclaim defendants Fourth Age Limited, Priscilla Mary Anne Reuel Tolkien, as Trustee of The Tolkien Trust, The J.R.R. Tolkien Estate Ltd., HarperCollins Publishers, Ltd., Unwin Hyman Ltd. and George Allen & Unwin (Publishers), Ltd. (collectively, the "Tolkien/HC Parties") herein. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I would and could competently testify thereto under oath.

2. On July 7, 2014, Warner filed its Motion to Compel Documents and Supplemented Privilege Log. Prior to filing that motion, Defendants did not meet and confer in good faith (or at all) on any purported substantive challenge to any of the Tolkien/HC Parties' specific privilege assertions. Attached hereto as Exhibit "A" is a true and correct copy of Warner's counsel's, Molly Lens, June 13, 2014 meet and confer letter concerning the Tolkien/HC Parties' privilege log, which was the sole meet and confer letter sent by either of Defendants regarding the Tolkien/HC Parties' privilege log and which does not substantively challenge the Tolkien/HC Parties' log.

3. Warner and Zaentz never challenged the propriety of any of the Tolkien/HC Parties privilege assertions with respect to any specific documents, in any of the parties' subsequent telephone conversations. At all times, Warner and Zaentz focused their meet and confer discussions on the purported deficiencies in the descriptions of the Tolkien/HC Parties' privilege log entries.

4. On August 15, 2014, counsel for all parties conducted a meet and

1 confer call pursuant to Local Rule 37-1, during which the Tolkien/HC Parties raised
2 and reiterated their concerns with respect to Defendants' privilege assertions at
3 issue in this joint stipulation, and informed Defendants' counsel that absent
4 Warner's and Zaentz's willingness to submit a selection of their own documents for
5 an *in camera* inspection, the Tolkien/HC Parties intended to seek relief from the
6 Court. Attached hereto as Exhibit "B" is a true and correct copy of my August 14,
7 2014 email to Ms. Lens and counsel for Zaentz, Sean Callagy, in which I requested
8 a Rule 37-1 conference regarding, *inter alia*, Defendants' privilege assertions.

9 5. After our August 15 conference, in response to Warner's and Zaentz's
10 requests for specific examples of Defendants' privilege entries which caused the
11 Tolkien/HC Parties concern, on September 4, 2014, I sent a follow up letter to my
12 August 14 email, in which I provided further detail regarding the Tolkien/HC
13 Parties' concerns with Defendants' privilege assertions. Attached hereto as Exhibit
14 "C" is a true and correct copy of my September 4 letter to counsel for Warner and
15 Zaentz.

16 6. On September 19, 2014, Warner and Zaentz each responded to my
17 September 4 letter and refused to stipulate to submitting their own documents for *in*
18 *camera* review, forcing the Tolkien/HC Parties to file this motion. Attached hereto
19 as Exhibits "D" and "E" are true and correct copies of Warner's September 19
20 responsive letter and Zaentz's September 19 responsive letter, respectively.

21 7. Attached hereto as Exhibit "F" is a true and correct copy of portions of
22 the Deposition Transcript of Benjamin Zinkin's January 14, 2014 deposition in this
23 matter.

24 8. Attached hereto as Exhibit "G" is a true and correct copy of portions of
25 the Deposition Transcript of Suzanne Rosecrans' July 15, 2009 deposition in the
26 case of *Tolkien, et. al v. New Line Cinema Corp., et. al* (Los Angeles County
27 Superior Court, Case No. BC385294).

28 9. In this action, Warner has not produced a single internal

1 communication between Ben Zinkin and/or Suzanne Rosencrans and other non-
2 lawyers at Warner.

3 10. Attached hereto as Exhibit “H” is a true and correct copy of Warner’s
4 privilege logs produced in this action, which are divided into a main log and a
5 redaction log.

6 11. Attached hereto as Exhibit “I” is a true and correct copy of Zaentz’s
7 privilege logs produced in this action, which are divided into paper documents and
8 ESI.

9 12. Attached hereto as Exhibit “J” is a true and correct copy of a
10 November 11, 1999 letter in which Cathleen Blackburn is responding to an inquiry
11 from Ben Zinkin regarding interactive games based on *The Lord of the Rings*,
12 which has been produced by Warner in this action and has been bates-labeled
13 WARNER0032697-WARNER000032705.

14 13. Attached hereto as Exhibit “K” is a true and correct copy of a January
15 18, 2000 letter from Suzanne Rosencrans to Cathleen Blackburn in which she is
16 seeking Ms. Blackburn’s input regarding New Line’s potential exploitation of
17 interactive games based on *The Lord of the Rings*, which has been produced by
18 Warner in this action and has been bates-labeled WARNER0033106.

19 14. Attached hereto as Exhibit “L” is a true and correct copy of a
20 November 1, 2001 email from John Mayo to David Imhoff, which has been
21 produced by Warner in this action and has been bates-labeled WARNER0039359.

22 15. Attached hereto as Exhibit “M” is a true and correct copy of an email
23 chain dated June 1, 2011 and June 2, 2011 between John Mayo and Fredrica
24 Drotos, Sam Benson and Joe Mandragona — non-lawyer employees of Warner and
25 Zaentz — concerning artwork approvals in connection with online slot machines
26 based on *The Lord of the Rings*, which has been produced by Warner in this action
27 and has been bates-labeled WARNER0039440-WARNER0039443.

28 16. Attached hereto as Exhibit “N” is a true and correct copy of portions of

1 the Deposition Transcript of Albert Bendich's February 13 and 14, 2014 deposition
2 in this matter.

3 17. Attached hereto as Exhibit "O" is a true and correct copy of a July 23,
4 1999 letter from Laurie Battle to Suzanne Rosencrans attaching a fully executed
5 copy of an Amendment to the Merchandising Agreement between Warner and
6 Zaentz, signed by Mr. Bendich, which has been produced by Zaentz in this action
7 and has been bates-labeled SZC0034243 - SZC0034244.

8 18. On or about July 3, 2014, my colleague, Rachel Valadez, did a search
9 on the California State Bar website regarding Zaentz's former in-house counsel, Al
10 Bendich. According to the California State Bar website, Mr. Bendich went inactive
11 with the California State Bar in 2001.

12 19. Attached hereto as Exhibit "P" is a true and correct copy of a
13 September 1, 2004 letter from Douglas Winthrop to Ben Zinkin, which has been
14 produced by Zaentz in this action and has been bates-labeled SZC0048442 -
15 SZC0048444.

16 20. Attached hereto as Exhibit "Q" is a true and correct copy of Settlement
17 Agreement and Mutual Release dated October 3, 2003 between Zaentz and New
18 Line, which has been produced by Warner in this action and has been bates-labeled
19 WARNER0063697-WARNER0063702.

20 21. Attached hereto as Exhibit "R" is a true and correct copy of Settlement
21 Agreement and Merchandising Agreement dated December 14, 2010 between
22 Zaentz and Warner, which has been produced by Warner in this action and has been
23 bates-labeled WARNER0073238-WARNER0073247.

24 22. Attached hereto as Exhibit "S" is a true and correct copy of portions of
25 the Deposition Transcript of Laurie Battle's January 17, 2014 deposition in this
26 matter.

27 23. Attached hereto as Exhibit "T" is a true and correct copy of portions of
28 the Deposition Transcript of Cathleen Blackburn's December 10, 2013 deposition

1 in this matter.

2 24. Attached hereto as Exhibit “U” is a true and correct copy of portions of
3 the Deposition Transcript of Steven Maier’s December 13, 2013 deposition in this
4 matter.

5 25. Attached hereto as Exhibit “V” is a true and correct copy of portions of
6 the Deposition Transcript of Christopher Tolkien’s June 23, 2014 deposition in this
7 matter.

8 26. Attached hereto as Exhibit “W” is a true and correct copy of a draft
9 agreement dated 2010 between Zaentz and Warner, which has been produced by
10 Zaentz in this action and has been bates-labeled SZC0004379-SZC0004387.

11 27. At the Deposition of David Imhoff in this action, Warner’s counsel
12 brought with them unredacted, not previously produced versions of certain
13 improperly redacted communications.

14 28. Attached hereto as Exhibit “X” is a true and correct copy the
15 deposition transcript of Paul Zaentz’s September 25, 2007 deposition in the case of
16 *The Saul Zaentz Company d.b.a. Tolkien Enterprises v. Wozniak Travel, Inc.*
17 (United States District Court, Northern District of California, Case No.
18 C065421(MHP)), which has been produced by Zaentz in this action and has been
19 bates-labeled SZC0001261-SZC0001302.

20 29. Attached hereto as Exhibit “Y” is a true and correct copy of the
21 Court’s April 8, 2013 order establishing the initial case schedule in this matter.

22 30. Attached hereto as Exhibit “Z” is a true and correct copy of the Court’s
23 August 28, 2013 order vacating the trial date in this matter and extending the
24 discovery cutoff to April 15, 2014.

25 31. Attached hereto as Exhibit “AA” is a true and correct copy of the
26 Court’s April 14, 2014 order which, among other things, further extends the
27 discovery cutoff to July 29, 2014.
28

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

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4 Executed this 24th day of September, 2014 at Los Angeles, California.

5
6 /s/ Julia Haye

7 Julia Haye
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